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20 FORESCOUT TECHNOLOGIES, INC.

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25 UNITED STATES DISTRICT COURT
26 NORTHERN DISTRICT OF CALIFORNIA
27 SAN FRANCISCO DIVISION

28 FORTINET, INC.,

CASE NO. 3:20-CV-03343-EMC

Plaintiff and Counter-
Defendant,

**FORESCOUT'S ANSWER TO FORTINET'S
COUNTERCLAIMS**

vs.

JURY TRIAL DEMANDED

FORESCOUT TECHNOLOGIES, INC.,

Defendant and Counter-
Plaintiff.

ANSWER OF FORESCOUT TECHNOLOGIES INC. TO FORTINET INC.'S
COUNTERCLAIMS

FORTINET'S COUNTERCLAIMS

21. Fortinet is a Delaware corporation with a principal place of business at 1090 Kifer Road, Sunnyvale, California, 94086.

ANSWER: ADMITTED

22. Upon information and belief, Forescout is a Delaware corporation with a principal place of business at 190 West Tasman Drive, San Jose, California 95134.

ANSWER: ADMITTED

23. By filing its Answer and Counterclaims, Forescout has consented to the personal jurisdiction of this Court.

ANSWER: ADMITTED

24. In view of the filing by Forescout of its Counterclaims and Fortinet's defenses, there exists an actual and justiciable controversy between the parties regarding the validity, enforceability, and alleged infringement of the '004, '116, '764, '079, '489, or '278 Patents (collectively, the "Forescout Patents in Suit").

ANSWER: ADMITTED

25. Subject matter jurisdiction is proper under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the patent laws of the United States, 35 U.S.C. §§ 100, et seq., concerning actions related to patents, and 28 U.S.C. §§ 1331 and 1338.

ANSWER: ADMITTED

26. Venue in this District is proper because Forescout filed its Answer and Counterclaims here and has admitted that venue is proper here.

ANSWER: ADMITTED

I. First Counterclaim – Declaratory Judgment of Invalidity of the '004 Patent

27. Fortinet incorporates by reference the responses and allegations set forth in preceding paragraphs of its Answer and these Counterclaims.

ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.

1 28. The '004 Patent is invalid for failure to comply with the requirements of Title
2 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133.

3 **ANSWER: DENIED**

4 29. Fortinet seeks a judgment declaring that the claims of the '004 patent are invalid.

5 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE
6 RELIEF SOUGHT.**

7 **II. Second Counterclaim – Declaratory Judgment of Invalidity of the '116 Patent**

8 30. Fortinet incorporates by reference the responses and allegations set forth in preceding
9 paragraphs of its Answer and these Counterclaims.

10 **ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO
11 THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY
12 ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.**

13 31. The '116 Patent is invalid for failure to comply with the requirements of Title
14 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133.

15 **ANSWER: DENIED**

16 32. Fortinet seeks a judgment declaring that the claims of the '116 patent are invalid.

17 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE
18 RELIEF SOUGHT.**

19 **III. Third Counterclaim – Declaratory Judgment of Invalidity of the '764 Patent**

20 33. Fortinet incorporates by reference the responses and allegations set forth in preceding
21 paragraphs of its Answer and these Counterclaims.

22 **ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO
23 THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY
24 ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.**

25 34. The '764 Patent is invalid for failure to comply with the requirements of Title
26 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133

27 **ANSWER: DENIED**

28 35. Fortinet seeks a judgment declaring that the claims of the '764 patent are invalid.

1 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE**
2 **RELIEF SOUGHT.**

3 **IV. Fourth Counterclaim – Declaratory Judgment of Invalidity of the '079 Patent**

4 36. Fortinet incorporates by reference the responses and allegations set forth in preceding
5 paragraphs of its Answer and these Counterclaims.

6 **ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO**
7 **THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY**
8 **ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.**

9 37. The '079 Patent is invalid is invalid for failure to comply with the requirements of Title
10 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133

11 **ANSWER: DENIED**

12 38. Fortinet seeks a judgment declaring that the claims of the '079 patent are invalid.

13 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE**
14 **RELIEF SOUGHT.**

15 **V. Fifth Counterclaim – Declaratory Judgment of Invalidity of the '489 Patent**

16 39. Fortinet incorporates by reference the responses and allegations set forth in preceding
17 paragraphs of its Answer and these Counterclaims.

18 **ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO**
19 **THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY**
20 **ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.**

21 40. The '489 Patent is invalid is invalid for failure to comply with the requirements of Title
22 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133

23 **ANSWER: DENIED**

24 41. Fortinet seeks a judgment declaring that the claims of the '489 patent are invalid.

25 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE**
26 **RELIEF SOUGHT.**

27 **VI. Sixth Counterclaim– Declaratory Judgment of Invalidity of the '278 Patent**

28 42. Fortinet incorporates by reference the responses and allegations set forth in preceding

1 paragraphs of its Answer and these Counterclaims.

2 **ANSWER: FORESCOUT INCORPORATES BY REFERENCE ITS RESPONSES TO**
3 **THE PRIOR PARAGRAPHS OF THE COUNTERCLAIMS. EXCEPT AS EXPRESSLY**
4 **ADMITTED, EACH SUCH RESPONSE AND ALLEGATION IS DENIED.**

5 43. The '278 Patent is invalid is invalid for failure to comply with the requirements of Title
6 35 of the U.S. Code, including at least 35 U.S.C. §§ 101, 102, 103, 112, and/or 133.

7 **ANSWER: DENIED**

8 44. Fortinet seeks a judgment declaring that the claims of the '278 patent are invalid.

9 **ANSWER: FORESCOUT DENIES THAT FORTINET IS ENTITLED TO THE**
10 **RELIEF SOUGHT.**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Forescout respectfully requests that this Court enter judgment in its favor and
13 against Fortinet, and grant the following relief:

- 14 A. that Fortinet be denied all the relief that it has requested as set forth in its Counterclaim
15 and that the Counterclaim be dismissed with prejudice; and
16 B. that the Court find this case to be an exceptional case and that Forescout be awarded
17 its costs and recoverable attorneys' fees incurred in defending this action pursuant to
18 35 U.S.C. § 285 and as otherwise allowed.

19 **DEMAND FOR JURY TRIAL**

20 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Forescout respectfully demands
21 trial by jury.

22 FORESCOUT TECHNOLOGIES, INC.

23 Dated: December 21, 2021

/s/ *Katherine Vidal*

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